

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of ) NCE Reserved Allotment Group - Greenup,
) Illinois; NCE MX Group Number 521
Comparative Consideration of Two Groups of )
Mutually Exclusive Applications )
for Permits to Construct New Noncommercial )
Educational FM Stations )

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2016

Released: March 30, 2016

By the Commission:

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I. BACKGROUND

1. By this Memorandum Opinion and Order (Order), the Commission considers two groups of mutually exclusive applications for new noncommercial educational (NCE) FM station construction permits. The Commission resolves such conflicting NCE proposals by applying comparative procedures codified in Part 73, Subpart K, of the Commission’s Rules (the Rules). This Order uses a point system to tentatively select applications for grant and initiates a 30-day period for filing petitions to deny against the applicants tentatively selected.

1 Each application for the vacant Greenup, Illinois, allotment was filed during a filing window that was open from August 8, 2014, through September 8, 2014, for vacant FM allotments on Channels 221 through 300 that had been reserved for NCE use. See Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use, Public Notice, 29 FCC Rcd 9530 (MB 2014) (Reserved Allotment Notice). Each application in NCE MX Group 521 was filed during a filing window that was open from October 12, 2007, through October 22, 2007, for FM reserved band (Channels 201-220) proposals. See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007, Window, Public Notice, 22 FCC Rcd 15050 (MB 2007); Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007, Public Notice, 22 FCC Rcd 18680 (MB 2007).

2 47 CFR §§ 73.7000 – 73.7005.

3 See id. § 73.7004(b).

## II. NCE RESERVED FM ALLOTMENT

2. Each application for the new NCE FM station at Greenup, Illinois, proposes to operate on an existing, vacant FM allotment on Channel 230A (part of the non-reserved FM band) that has been reserved for NCE use.<sup>4</sup> The Commission reserves a non-reserved FM band allotment if the petitioner successfully demonstrates that no reserved channel could be used without causing prohibited interference to (1) TV channel 6 stations, or (2) foreign broadcast stations.<sup>5</sup>

3. In the *NCE Second Report and Order* the Commission adopted a third test for channel reservation (Third Reservation Standard).<sup>6</sup> Under the Third Reservation Standard, a reservation proponent must demonstrate that (1) it is technically precluded from using a reserved band channel, and (2) it would provide a first and/or second NCE radio service to at least ten percent of the population within the 60 dBu (1 mV/m) contour of its proposed station, and that such population is at least 2,000 people.<sup>7</sup> The Commission specifically advised prospective NCE applicants that the first or second NCE service requirement remains applicable at the application stage.<sup>8</sup> Therefore, if the Third Reservation Standard served as the basis for reservation of the allotment, applicants for that allotment must provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that population must be at least 2,000 people. Applications that fail to satisfy this requirement are eliminated and do not proceed to the point system analysis.

## III. GENERAL NCE PROCEDURES

4. The Commission's analysis of mutually exclusive groups of NCE applications generally consists of three main components. First, for non-allotment groups, in which applicants can propose service to different communities (such as NCE MX Group 521), the Media Bureau (Bureau) performs a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended (the Act).<sup>9</sup> Second, application conflicts not resolved under this "fair distribution" analysis,<sup>10</sup> as well as mutually exclusive groups of applications for vacant FM allotments reserved for NCE use (such as, the Greenup, Illinois, allotment), are compared under an NCE point system.<sup>11</sup> The point system is a simplified, "paper hearing" process.<sup>12</sup> The Commission generally has awarded the number of points

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<sup>4</sup> See *Greenup, Illinois*, Report and Order, 28 FCC Rcd 355 (MB 2013). Non-reserved FM band channels reserved exclusively for NCE use appear with an asterisk designation in the Table of FM Allotments, Section 73.202 of the Commission's Rules. See 47 CFR § 73.202. Three vacant reserved FM allotments were available for application in the August-September 2014, window. See *Reserved Allotment Notice* at Attachment A.

<sup>5</sup> See 47 CFR § 73.202(a)(1)(i).

<sup>6</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (*NCE Second Report and Order*).

<sup>7</sup> *Id.* at 6703-05.

<sup>8</sup> See *NCE Second Report and Order*, 18 FCC Rcd at 6705, para. 38 ("Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service"). See also 47 CFR § 73.202(a)(1)(ii).

<sup>9</sup> See 47 U.S.C. § 307(b). An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide, within the proposed station's 60 dBu contour, a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), provided that such service is to at least 2,000 people. See 47 CFR § 73.7002(b).

<sup>10</sup> See 47 CFR § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities).

<sup>11</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>12</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Notice of Proposed Rulemaking, 10 FCC Rcd 2877 (1995), *further rules proposed*, Further Notice of Proposed Rulemaking,

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claimed by each applicant in Section IV of its application. Third, if necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications contained in Section V of each application. Each of these steps is described in greater detail below.

**A. Point System Selection Process**

5. **Four Distinct Criteria.** The Commission compares mutually exclusive groups of NCE FM applications under the point system set forth in Section 73.7003 of the Rules.<sup>13</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria.<sup>14</sup>

6. Established Local Applicant. First, three points are awarded to applicants that certify that they have been local and established for at least two years immediately prior to the filing of their application. Applicants with a headquarters, campus, or 75 percent of their board members residing within 25 miles of the reference coordinates of the community of license are considered local. A governmental unit is considered local within its area of jurisdiction. To qualify for such points based on board composition, the applicant must certify that its governing documents require that such local board composition be maintained. The applicant also must certify that it has placed documentation supporting its certification in a local public inspection file, and that it has submitted that documentation to the Commission.<sup>15</sup> Any applicant awarded localism points in this Order has provided support for its certification.

7. Diversity of Ownership. Second, two points are awarded for local diversity of ownership if the principal community contours of the applicant's proposed station do not overlap with those of any other station in which any party to the application holds an attributable interest.<sup>16</sup> To be awarded such points, an applicant's governing documents must include a provision requiring that such diversity of ownership be maintained by the applicant *and* all board members in the future. Applicants that are organized pursuant to state charters that cannot be amended without legislative action are permitted to base the governing document component of their local diversity certifications on other safeguards that reasonably assure that board characteristics supporting any points claimed by the applicant will be maintained.<sup>17</sup> An applicant awarded diversity of ownership points must submit and place in its public file copies of pertinent governing documents to support its certification or, for applicants such as state universities that are governed by laws which cannot be amended without legislative action, an appropriate alternative showing. Thus, the specific point system determinations for each group of mutually exclusive applications that follow only discuss an applicant's documentation if it is insufficient to justify awarding diversity points.

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13 FCC Rcd 21167 (1998), *rules adopted*, Report and Order, 15 FCC Rcd 7386 (2000) (*NCE Order*), *vacated in part on other grounds sub nom.*, *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (*NCE MO&O*), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002), *aff'd sub nom. American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 634 (2004).

<sup>13</sup> See 47 CFR § 73.7003.

<sup>14</sup> See 47 CFR § 73.7003(b).

<sup>15</sup> See *FCC Form 340*, Instructions, at 9 (requiring governing documents to ensure that applicant maintain "local" characteristics of governing board); *FCC Form 340*, Worksheet 4 (same); *NCE Order*, 15 FCC Rcd at 7419, para. 78.

<sup>16</sup> See 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. See 47 CFR § 73.7000. Interests of certain entities providing more than 33 percent of the applicant's equity and/or debt are also attributable. *Id.*

<sup>17</sup> See *NCE MO&O*, 16 FCC Rcd at 5095, para. 58.

8. State-wide Network. Third, two points are awarded for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>18</sup>

9. Technical Parameters. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area and population are ten percent greater than those of the next best area and population proposals, or two points if both are 25 percent greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.<sup>19</sup> If the best technical proposal does not meet the 10 percent threshold, no applicant is awarded points under this criterion. In considering this criterion, we generally accept applicants' coverage and population claims.

10. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee." All other applicants are eliminated.

#### **B. Tie-Breakers.**

11. Applicants tied with the highest number of points awarded in a particular group proceed to a tie-breaker round.<sup>20</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>21</sup> The applicant with the fewest attributable authorizations prevails. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of radio station new and major change applications attributable to each applicant. Applicants are required to include such applications for construction permits filed for other aural services prior to the window, the current application, as well as all other such applications filed within the window.<sup>22</sup> If that second factor fails to break the tie, we use mandatory timesharing as the tie-breaker of last resort.

#### **C. Timely Documentation of Comparative Qualifications.**

12. The new full service NCE station application, FCC Form 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information both to the Commission and to a local public file.<sup>23</sup> Applicant point claims must be readily ascertainable from timely-filed application exhibits.<sup>24</sup> Certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation, are not credited. For

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<sup>18</sup> See 47 CFR § 73.7003(b)(3). The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit.

<sup>19</sup> *Id.* § 73.7003(b)(4).

<sup>20</sup> See 47 CFR § 73.7003(c).

<sup>21</sup> *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations and certain FM translator stations. An applicant may exclude fill-in translators and any translator that the applicant seeks to replace with its full service proposal filed in the window. Applicants requesting and receiving a rule waiver may similarly exclude an LPFM or Class D FM station.

<sup>22</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6123, para. 55 (2007) (*NCE Omnibus*).

<sup>23</sup> See *NCE Order*, 15 FCC Rcd at 7423, para. 89.

<sup>24</sup> To be considered timely-filed, such exhibits must be filed by the close of the filing window. See, *e.g.*, *Comparative Consideration of 59 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 25 FCC Rcd 1681, 1694, para. 49 (2010) (rejecting documentation filed after close of window).

example, the Commission rejects claims where the applicant certifies that it qualifies for points for diversity of ownership or as an established local applicant but fails to supply supporting information referred to in the certification. As noted above, every applicant claiming points for diversity of ownership must certify that the proposed station's service area would not overlap that of an attributable existing station, that its governing documents require that such diversity be maintained, and "that it has placed documentation of its diversity qualifications in a local public file and has submitted to the Commission copies of that documentation."<sup>25</sup> Similar certifications and documents are required of applicants claiming points as established local applicants.<sup>26</sup> While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot be found to have made a valid certification.

#### IV. POINT SYSTEM DETERMINATIONS

13. This Section contains narrative descriptions of our point system analyses in the two mutually exclusive proceedings. The reserved allotment group (Greenup, Illinois) and NCE MX Group 521 are each being considered for the first time. Unless otherwise noted, each component of the analysis is based on applicant-provided information.<sup>27</sup> Applicants were required to report their qualifications as of the date of application. Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's comparative position.<sup>28</sup>

14. **Greenup, Illinois.** This group consists of three applications proposing service on vacant Channel 230A at Greenup, Illinois, an allotment reserved by means of the Third Reservation Standard.<sup>29</sup> Each of the three applicants, Calvary Chapel of Twin Falls, Inc. (Calvary), Canton Seventh- Day Adventist Church (Canton), and Word Power, Inc. (WPI),<sup>30</sup> demonstrates compliance with the Third Reservation Standard criteria<sup>31</sup> and proceeds to the point system analysis. None of the applicants claims

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<sup>25</sup> See *FCC Form 340*, Instructions, Question IV(2). With respect to documenting current diversity, the preferred information is a map showing no overlap or a statement that none of the parties to the application holds an attributable interest in any other station. To document future diversity, the applicant would generally submit a copy of the governing documents referenced in the certification. If the applicant is an entity that does not employ traditional corporate governance documents, the Commission will consider alternative safeguards if they reasonably assure that board characteristics will be maintained during the four-year holding period. See *Comparative Consideration of Seven Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 30 FCC Rcd 5135, 5148, para. 35 (2015) (*Seven Group Order*).

<sup>26</sup> See *FCC Form 340*, Instructions, Question IV(1). Examples of acceptable documentation include corporate materials from the secretary of state, lists of names, addresses, and length of residence of board members, copies of governing documents requiring a 75 percent local governing board, and course brochures indicating that classes have been offered at a local campus for the preceding two years.

<sup>27</sup> Specifically, the applicants reported their claims to qualify as established local applicants, for diversity of ownership, and as statewide networks in their responses to Questions IV(1), (2) and (3) respectively, and in supporting documentation. Applicants reported the area and population figures used in our analyses of technical parameters in responses to Question IV(4) and associated exhibits. Tie-breaker information concerning the applicants' attributable interests in other radio station authorizations and other radio station applications were reported in responses to Questions V(1) and (2), respectively.

<sup>28</sup> See 47 CFR §73.7003(e).

<sup>29</sup> See *supra*, note 4.

<sup>30</sup> WPI previously submitted an FCC Form 301 application with its simultaneously filed Petition for Rulemaking for the Greenup, Illinois, vacant allotment. See FCC File No. BNPED-20120530ALR. To facilitate the full processing of all mutually exclusive NCE applications for the reserved allotment, the Bureau directed WPI to also submit FCC Form 340 during the August-September 2014, reserved allotment window. See *Reserved Allotment Notice*, 29 FCC Rcd at 9533; FCC File No. BNPED-20140905ABD.

<sup>31</sup> See Canton, WPI, and Calvary Applications, Questions III(1), III(2), and associated exhibits. Canton claims that it would provide aggregated first and second NCE service to 13,456 of the 42,114 people encompassed within its

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points as an established local applicant or as a state-wide network. Calvary and Canton certify that they are each entitled to two points for diversity of ownership; WPI does not claim points under this criterion. Calvary and Canton, however, fail to adequately support their respective diversity claims, and therefore, neither will receive points under this criterion.<sup>32</sup> With respect to technical parameters, Canton claims that its proposed 60 dBu contour would encompass 2,092 square kilometers with a population of 42,114; WPI, 2,316 square kilometers and 32,011 people; and Calvary, 1,880 square kilometers and 30,437 people. None of the applicants qualifies for points under the best technical proposal criterion because no applicant proposes to serve both the most area and population, at least 10 percent greater than the next best applicant. Accordingly, Canton, WPI, and Calvary are each not credited with any points and proceed to a tie-breaker.

15. The first issue considered in the tie-breaker is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Canton certifies that it has two attributable interests; WPI certifies that it has five attributable interests; and Calvary certifies that it has 450 attributable interests. Canton therefore prevails based on this first tie-breaker and is the tentative selectee for the new Channel 230A NCE FM station at Greenup, Illinois.

16. **NCE MX Group 521.** This group consists of two applications proposing service to two different communities in Maine. Roman Catholic Diocese of Portland, Maine (the Diocese) proposes to serve Scarborough, Maine.<sup>33</sup> Community Radio, Inc. (CRI) proposes to serve Oak Hill, Maine. When applicants propose to serve different communities, the Commission must first determine whether any applicant is credited with a dispositive fair distribution preference. Each applicant states that it is not eligible for a fair distribution preference. Accordingly, we proceed to the point system analysis.

17. The Diocese certifies that it is eligible for three points as an established local applicant and two points for diversity of ownership. The Diocese, however, fails to sufficiently support its diversity claim.<sup>34</sup> Accordingly, we will not award the Diocese any points for diversity of ownership. CRI does not

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proposed 60 dBu contour; WPI to 21,524 of the 32,011 people; and Calvary to 19,926 of the 30,437 people within its proposed 60 dBu contour. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

<sup>32</sup> Although Calvary certifies that its proposed station will not overlap the principal community contours of any of its authorized stations, Calvary provides no indication that it timely adopted or modified its governing documents to require it to maintain diversity in the future. Canton provides a written policy statement declaring, in pertinent part, “at no time shall the church hold an attributable interest in another radio station if the principal community contour would overlap, in whole or in part, the principal community contour of the radio station that will result from this application.” FCC File No. BNPED-20140908AEU at Exhibit 1. Canton’s statement is insufficient because it neglects to specifically prohibit the parties to the application, the church board members, from having attributable interests in other broadcast stations, and therefore, lacks safeguards to reasonably assure that diversity will be maintained by future board members. *See Seven Group Order*, 30 FCC Rcd at 5148, para. 36 (denying diversity points to an applicant that provided insufficient documentation, identical to that provided by Canton, to support its diversity claim).

<sup>33</sup> The Diocese’s application was initially dismissed by the Bureau because of a typographical error in the antenna location coordinates specified in the Tech Box of its Application. As a result of this error, the incorrectly specified coordinates did not provide sufficient community coverage of its community of license. *See* 47 CFR § 73.515. After the Bureau had denied reconsideration, the Commission subsequently reinstated the corrected Diocese application for further processing in accordance with the procedures for evaluating MX NCE FM applications. *See* 47 CFR §§ 73.3573; 73.7000, *et seq.*; *Roman Catholic Diocese of Portland, Maine*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014). The corrected Diocese application is now mutually exclusive with the CRI application.

<sup>34</sup> The Diocese certifies that it currently has no attributable interests in any radio authorizations and provides governing documents limiting its ability to acquire other stations in the same area as its proposed station. The Diocese, however, neglects to include safeguards to assure that diversity will also be maintained by current and future board members. *See* FCC File No. BNPED-20071018ATK at Exhibits 2 and 14; *see also supra*, note 32.

claim points under either the localism or diversity criterion. Neither applicant claims points as a state-wide network. With respect to technical parameters, the Diocese claims that its proposed 60 dBU contour would encompass 514 square kilometers and 68,769 people. CRI claims that its proposed 60 dBU contour would encompass 272 square kilometers and 36,573 people. The Diocese qualifies for two points under the best technical proposal criterion because its proposal will serve at least 25 percent more area and population than CRI's proposal. Accordingly, the Diocese is credited with a total of five points; CRI is not credited with any points. The Diocese is therefore the tentative selectee in MX Group 521.

## V. NEXT STEPS

18. **Acceptability Studies and Filing of Petitions.** The staff has examined the application of each tentative selectee for application defects.<sup>35</sup> Each tentative selectee identified in this Order appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, the applications of the tentative selectees are accepted for filing. This triggers a 30-day period from release of the Order for the filing of petitions to deny.

19. Any argument that the tentatively selected application should not be granted must be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's comparative points. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's should make its argument in a petition to deny. Parties may not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on the application, and petitions for reconsideration do not lie against such interlocutory decisions.<sup>36</sup> Any such petition to deny must contain allegations of fact supported by an affidavit of a person or persons with personal knowledge thereof.<sup>37</sup> Responsive pleadings, if any, should be submitted as provided for in Section 73.7004(c) of the Rules.<sup>38</sup>

20. **Forthcoming Staff Action.** We direct the staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with the Bureau's routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If no such question exists, we direct the staff to grant the applications on the basis of the point system determinations made herein and dismiss all competing applications.

21. With the exception of issues that are new or novel or require Commission or Administrative Law Judge consideration by statute or rules, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission Rules and policies.<sup>39</sup> The staff need not refer such matters to the Commission or designate such matters for hearing before an

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<sup>35</sup> If a tentative selectee's application is found unacceptable for filing, it is returned. The applicant is then given one opportunity to submit a curative amendment. *See* 47 CFR § 73.3522(b)(2). A tentative selectee that is unable to cure the defect with a minor amendment is disqualified, and the applicant with the next highest point tally becomes the new tentative selectee. *See* 47 CFR § 73.7004(d).

<sup>36</sup> *See id.* § 1.106(a)(1). *See also* Patrick J. Vaughn, Esq., Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>37</sup> *See* 47 CFR § 73.7004(b).

<sup>38</sup> *See* 47 CFR § 73.7004(c).

<sup>39</sup> *See, e.g.,* Central Florida Educational Foundation, Inc., Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

Administrative Law Judge unless the issues are new or novel, or raise a substantial and material question of fact regarding the award of points.<sup>40</sup> Generally, the staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where there is a new or novel issue.<sup>41</sup> In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the new or novel issue and/or the determination of a successor tentative selectee. In cases where there is a substantial and material question of fact, the staff should designate the issue for hearing before an Administrative Law Judge.

22. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision with respect to the other group discussed herein.

## VI. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, That each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals.<sup>42</sup> If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

24. **NCE Reserved Allotment Group – Greenup, Illinois.** Accordingly, IT IS ORDERED, That Canton Seventh Day Adventist Church is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station on Channel 230A at Greenup, Illinois. The application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentatively selected application, we direct the staff, by public notice, TO DISMISS the mutually exclusive applications of Word Power, Inc. (File Nos. BNPED-20140905ABD and 20120530ALR) and Calvary Chapel of Twin Falls, Inc. (BNPED-20140904AAH), and TO GRANT the application of Canton Seventh-Day Adventist Church (File No. BNPED-20140908AEU), CONDITIONED UPON the selectee's compliance with 47 CFR § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system, and 47 CFR § 73.202(a)(1)(ii), which requires that the NCE station provide the requisite level of first and second NCE service.

25. **NCE MX Group 521.** Accordingly, IT IS ORDERED, That Roman Catholic Diocese of Portland, Maine is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Scarborough, Maine, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the staff, by public notice, TO DISMISS the mutually exclusive application of Community Radio, Inc. (File No. BNPED-20071012AOQ), and TO GRANT the application of Roman Catholic Diocese of Portland, Maine (File No. BNPED-20071018ATK) CONDITIONED UPON that

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<sup>40</sup> See 47 CFR § 0.283(c).

<sup>41</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162 n.230 (2007) (standards for staff evaluation of petitions).

<sup>42</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or a reviewing court. See, e.g., FED. R. APP. P. 3(b).

selectee's compliance with 47 CFR § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary